

**Representative Todd E. Kiser** proposes the following substitute bill:

**PRODUCER AND AFFILIATE DISCLOSURE**

**AMENDMENTS**

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Beverly Ann Evans**

House Sponsor: James A. Dunnigan

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**LONG TITLE**

**General Description:**

This bill amends the licensee compensation provisions of the Insurance Code.

**Highlighted Provisions:**

This bill:

▶ beginning January 1, 2007, under certain circumstances, requires the disclosure of commission compensation and overrides that are received by an insurance producer;

and

▶ clarifies disclosure requirements for conflict of interest and compensation.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**31A-23a-401**, as renumbered and amended by Chapter 298, Laws of Utah 2003

**31A-23a-501**, as renumbered and amended by Chapter 298, Laws of Utah 2003

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26 *Be it enacted by the Legislature of the state of Utah:*

27 Section 1. Section **31A-23a-401** is amended to read:

28 **31A-23a-401. Disclosure of conflicting interests.**

29 (1) (a) (i) Except as provided under Subsection (1)(b)~~[, no]~~:

30 (A) a licensee under this chapter may not act in the same or any directly related  
31 transaction as:

32 (I) a producer for the insured or consultant; and

33 (II) a producer for the insurer; ~~[nor may]~~

34 (B) a producer for the insured or consultant may not recommend or encourage the  
35 purchase of insurance from or through an insurer or other producer;

36 (I) of which the producer for the insured or consultant or producer for the insured's or  
37 consultant's spouse is an owner, executive, or employee; or

38 (II) to which ~~[he]~~ the producer for the insured or consultant has the type of relation that  
39 a material benefit would accrue to the consultant or spouse as a result of the purchase.

40 (b) Subsection (1)(a) does not apply if ~~[the following three]~~ each of the conditions in  
41 this Subsection (1)(b) are met~~[:]~~.

42 (i) Prior to performing the consulting services, the producer for the insured or  
43 consultant ~~[discloses]~~ shall disclose to the client, prominently, in writing~~[:]~~:

44 (A) (I) the producer for the insured's or consultant's interest as a producer for the  
45 insurer~~[:]~~; or

46 (II) the relationship to an insurer or other producer~~[:]~~; and

47 (B) that as a result of those interests the ~~[consultant's]~~ recommendations of the  
48 producer for the insured or consultant should be given appropriate scrutiny.

49 (ii) The producer for the insured's or consultant's fee ~~[is]~~ shall be agreed upon, in  
50 writing, after the disclosure required under Subsection (1)(b)(i), but prior to performing the  
51 requested services.

52 (iii) Any report resulting from requested services ~~[contains]~~ shall contain a copy of the  
53 disclosure made under Subsection (1)(b)(i).

54 (2) ~~[No]~~ A licensee under this chapter may not act as to the same client as both a  
55 producer for the insurer and a producer for the insured without the client's prior written consent  
56 based on full disclosure.

57 (3) Whenever a person applies for insurance coverage through a producer for the  
58 insured, the producer for the insured shall disclose to the applicant, in writing, that:

59 (a) the producer for the insured is not the producer for the insurer of the potential  
60 insurer~~[. This disclosure shall also inform the applicant that]; and~~

61 (b) the applicant likely does not have the benefit of an insurer being financially  
62 responsible for the producer for the insured's conduct.

63 (4) If a licensee is subject to both this section and Subsection 31A-23a-501(4), the  
64 licensee shall provide the disclosures required under each statute.

65 Section 2. Section **31A-23a-501** is amended to read:

66 **31A-23a-501. Licensee and affiliate compensation.**

67 (1) As used in this section:

68 (a) "Commission compensation" includes funds paid to or credited for the benefit of a  
69 licensee from:

70 (i) commission amounts deducted from insurance premiums on insurance sold by or  
71 placed through the licensee; or

72 (ii) commission amounts received from an insurer or another licensee as a result of the  
73 sale or placement of insurance.

74 (b) (i) "Noncommission compensation" includes all funds paid to or credited for the  
75 benefit of a licensee other than commission compensation.

76 (ii) "Noncommission compensation" does not include charges for pass-through costs  
77 incurred by the licensee in connection with obtaining, placing, or servicing an insurance policy.

78 (c) "Pass-through costs" include:

79 (i) costs for copying documents to be submitted to the insurer; and

80 (ii) bank costs for processing cash or credit card payments.

81 (d) "State entity" is defined in Section 67-4-2 and includes:

82 (i) state institutions of higher education; and

83 (ii) state institution of public education.

84 (2) A licensee may receive from an insured or from a person purchasing an insurance  
85 policy, noncommission compensation if the noncommission compensation is stated on a  
86 separate, written disclosure.

87 (a) The disclosure required by this Subsection (2) shall:

88 (i) include the signature of the insured or prospective insured acknowledging the  
89 noncommission compensation;

90 (ii) clearly specify the amount or extent of the noncommission compensation; and

91 (iii) be provided to the insured or prospective insured before the performance of the  
92 service.

93 (b) Noncommission compensation shall be:

94 (i) limited to actual or reasonable expenses incurred for services; and

95 (ii) uniformly applied to all insureds or prospective insureds in a class or classes of  
96 business or for a specific service or services.

97 (c) A copy of the signed disclosure required by this Subsection (2) must be maintained  
98 by any licensee who collects or receives the noncommission compensation or any portion  
99 ~~[thereof]~~ of the noncommission compensation.

100 (d) All accounting records relating to noncommission compensation shall be  
101 maintained by the person described in Subsection (2)(c) in a manner that facilitates an audit.

102 (3) (a) A licensee may receive noncommission compensation when acting as a  
103 producer for the insured in connection with the actual sale or placement of insurance if:

104 (i) the producer and the insured have agreed on the producer's noncommission  
105 compensation; and

106 (ii) the producer has disclosed to the insured the existence and source of any other  
107 compensation that accrues to the producer as a result of the transaction.

108 (b) The disclosure required by this Subsection (3) shall:

109 (i) include the signature of the insured or prospective insured acknowledging the  
110 noncommission compensation;

111 (ii) clearly specify the amount or extent of the noncommission compensation and the  
112 existence and source of any other compensation; and

113 (iii) be provided to the insured or prospective insured before the performance of the  
114 service.

115 (c) The following additional noncommission compensation is authorized:

116 (i) compensation received by a producer of a compensated corporate surety who under  
117 procedures approved by a rule or order of the commissioner is paid by surety bond principal  
118 debtors for extra services;

119 (ii) compensation received by an insurance producer who is also licensed as a public  
120 adjuster under Section 31A-26-203, for services performed for an insured in connection with a  
121 claim adjustment, so long as the producer does not receive or is not promised compensation for  
122 aiding in the claim adjustment prior to the occurrence of the claim;

123 (iii) compensation received by a consultant as a consulting fee, provided the consultant  
124 complies with the requirements of Section 31A-23a-401; or

125 (iv) other compensation arrangements approved by the commissioner after a finding  
126 that they do not violate Section 31A-23a-401 and are not harmful to the public.

127 (4) (a) Beginning January 1, 2007, in addition to any other disclosures required by this  
128 section, a producer, an affiliate of a producer, or a consultant doing business with a state entity  
129 may not accept or receive any commission compensation or overrides for that placement of  
130 insurance unless prior to the state entity's purchase or renewal of insurance the producer obtains  
131 the state entity's signed acknowledgment that commission compensation or overrides may be  
132 received by the producer, affiliate, or consultant from an insurer or third party for that  
133 placement.

134 (b) A copy of the signed acknowledgment required by Subsection (4)(a) must be  
135 maintained by the licensee who collects or receives any part of the commission compensation  
136 or overrides in a manner that facilitates an audit.

137 (c) This Subsection (4) does not apply to:

138 (i) a person licensed as a producer who acts only as an intermediary between an insurer  
139 and the state entity's producer, including a managing general agent;

140 (ii) the placement of insurance in a secondary or residual market; or

141 (iii) a producer whose sole compensation for the placement is derived from  
142 commissions, salaries, and other compensation from the insurer.

143 ~~[(4)]~~ (5) This section does not alter the right of any licensee to recover from an insured  
144 the amount of any premium due for insurance effected by or through that licensee or to charge  
145 a reasonable rate of interest upon past-due accounts.

146 ~~[(5)]~~ (6) This section does not apply to bail bond producers or bail enforcement agents  
147 as defined in Section 31A-35-102.

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